IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 123 OF 2006

Harivadan K. Khalar ... Petitioner

Versus

Stock Exchange Bombay & Anr. Respondents

Mr. Pankaj Das i/by Goenka Law Associates for Petitioner.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATED : APRIL 13, 2006

P.C.

. The Petitioner herein had an award against M/s. Kantilal Mangaldas Securities Pvt. Ltd. who was declared defaulter. Like Petitioner it appears that several others also obtained awards. The broker was declared as defaulter on 8.10.2003. The Petitioner and others filed this claims before the Investor Protection Fund, Respondent No. herein. It appears that correspondence was exchanged between the parties and ultimately the Petitioner was informed by a communication that the claim for compensation has been rejected as the Petitioner was not eligible as held by the trustees of the

Investors Protection Fund for the following reasons :

(1) Client code mentioned on the contract notes, issued by the defaulter member sub broker-I is not matching with the trade files of the Exchange.

(2) There is no corroborative evidence such as balance sheet of either the applicant or Shah Investments and or details of net debit receivable i.e. dues to/from clients in the balance sheet submitted by M/s. Shah Investments to substantiate the opening balance standing to the ledger account of applicant as at the relevant dates.

(3) On comparison of bank receipts/payments made by M/s. Shah Investments from to the applicant, it has observed that certain bank payments/receipts are not reflected/amended in the ledger account furnished in the course of arbitration.

. Aggrieved by communication, the Petitioner like others preferred an appeal to the Governing Board, Stock Exchange. The Petitioner was informed that

the Governing Board had delegated the matter to the Executive Committee.

. The Executive Committee considered the claim on 10.5.2005 considering written statement against the decision of the trustees of I.P.F. rejecting the claim. After considering the facts of each case, it found the decision of the defaulter's committee ought to be upheld. The appeal accordingly was rejected and the same is communicated to the Petitioner. It is this order which is subject matter of the present petition. It is the case of the Petitioner that the findings are based on no reason. The decision it is contended is bad, illegal and contrary to law.

. We have considered the impugned order and the records of the case in terms of the annexures annexed. It is no doubt true that there was an award in favour of the Petitioner. That was based on the claim being accepted by the broker and based on this consent the award came to be passed on 26.8.2003. The broker was declared defaulter on 8.10.2003. As the award was based on consent and

the subsequent declaration of the broker as defaulter, the respondent No. 2 could have sought proof as they were not parties to the award. The committee has recorded a finding of fact based on the records in their possession. The person conversant with the industry thereafter heard the appeal and dismissed the same. On the facts of this case, we do not find this to be a fit case where we should interfere with the decision taken in exercise of our extra ordinary jurisdiction. If however, the Petitioner have material in answer to the reasons given by the defaulter committee while rejecting their claim, they can make a representation based on those new facts. The committee then to consider the matter afresh. In the light of that, petition disposed off.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)